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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,043	02/19/2002	Vladimir Gartstein	8431M	4983

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

PEFFLEY, MICHAEL F

ART UNIT PAPER NUMBER

3739

DATE MAILED: 08/12/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/078,043

Applicant(s)

GARTSTEIN ET AL.

Examiner

Michael Peffley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 8, 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are unclear in that they fail to provide any structural limitations which are supportive of the recited functions. Rather, these claims recite intended uses without any structure and/or means for providing the results.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Eckhouse ('772).

Eckhouse discloses a device for treating tissue which comprises a broadband electromagnetic source for treating tissue *in-vivo*. The device is a flashlamp which provides light within the parameters set forth in the instant claim, and therefore the device is deemed to be functional to meet the intended use limitation of suppressing the growth potential of pathogens. In particular, Eckhouse teaches that the source may provide light having a wavelength in the 300-1000nm range (col. 5, line 25) with pulse

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durations (col. 7, lines 15-25) and energy intensities (col. 8, lines 30-32) within the ranges disclosed by the applicant. Eckhouse also disclose a controller for controlling the delivery of energy, as well as various filter means for providing specific wavelength bands of light to tissue. While Eckhouse does not specifically disclose the treatment of pathogens, the examiner maintains that the device would inherently perform such a function. The light parameters are substantially identical to those disclosed by the applicant, and the light is applied to skin tissue which would have pathogens (as disclosed by applicant at page 7, line 15 of the specification). The intended use limitations (i.e. to suppress pathogen growth) bears little patentable weight to the apparatus claims, and the Eckhouse apparatus is deemed to meet all the structural limitations and hence anticipate the apparatus claims. With further regard to the method claims (i.e. claims 10 and 15-20), the Eckhouse device is deemed to anticipate these claims as well since the light energy of Eckhouse is directed towards skin tissue which inherently would include pathogens.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse ('772) in view of the teaching of Talmore ('433).

The Eckhouse device has been addressed previously. The examiner maintains that the Eckhouse device would inherently treat pathogens on the skin tissue, particularly since Eckhouse provides light energy having substantially the same characteristics as set forth in the claims to the skin to treat conditions such as psoriasis. However, in order to more clearly show that the treatment of skin pathogens with light energy is known, the Talmore device is being referenced.

Talmore discloses a light treatment device for the treatment of psoriasis, similar to the Eckhouse skin treatment device. In particular, Talmore teaches the use of flashlamps to treat psoriasis, as well as additional skin conditions such as disclosed in column 4, lines 62-68 of the Talmore patent. It is noted that one of the pathogen treated conditions disclosed and claimed in the instant application includes skin conditions involving fungi.

Hence, to have utilized the Eckhouse device for the treatment of pathogens on skin tissue, in addition to or in lieu of the disclosed use of treating psoriasis, would have been an obvious consideration for one of ordinary skill in the art since Talmore teaches that psoriasis light treating devices may also be used to treat pathogen related conditions of skin.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dungan ('219) discloses another broadband wavelength illuminator for treating tissue. Sentilles ('522) and Johnson ('986) disclose means for

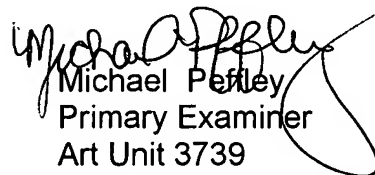
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providing germicidal treatment to tissue with light energy. Ganz ('625) and Biel ('424) disclose light sources for internally treating pathogens.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (703) 308-4305. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Michael Peffley
Primary Examiner
Art Unit 3739

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August 6, 2003